

**2002 Report on the State Bar of California
Discipline System**



April 2003

CONTENTS

INTRODUCTION _____	1
OFFICE OF THE CHIEF TRIAL COUNSEL _____	3
STATE BAR COURT _____	17
CLIENT SECURITY FUND _____	25
MANDATORY FEE ARBITRATION _____	27
PROFESSIONAL COMPETENCE _____	30
LAWYER ASSISTANCE PROGRAM _____	43
OFFICE OF CERTIFICATION _____	45
EDUCATION _____	48
GENERAL FUND AND MEMBERSHIP FEES _____	49
LEGISLATIVE DEVELOPMENTS _____	50
GLOSSARY _____	53

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INTRODUCTION

The State Bar of California (State Bar) has been in existence since 1927 as a non-profit public corporation and as the administrative arm of the California Supreme Court in matters involving the admission, regulation and discipline of attorneys.

The State Bar is an integrated bar: all lawyers practicing in California must be active members. As of December 31, 2002, the number of active attorneys in California is 142,913, making the State Bar of California the largest integrated state bar in the nation.

The State Bar is governed by a Board of Governors, which consists of 22 members and the President of the State Bar. Fifteen are lawyers elected by members of the State Bar. A 16th lawyer is elected by the Board of Directors of the California Young Lawyers Association (CYLA).

Since 1977, the State Bar has operated with increased involvement by the public. Beginning that year, six "public," non-lawyer, members were appointed to the Board of Governors - four by California's governor, one by the state Senate Committee on Rules and one by the Speaker of the Assembly.

One of the most important functions of the State Bar is to protect the public, courts and the legal profession from lawyers who fail to adhere to their professional responsibilities. As the following pages address in more detail, the units of the State Bar that contribute to the important function of discipline or, more broadly, public protection are:

The Office of the Chief Trial Counsel (OCTC): OCTC is responsible for the receipt, investigation, and prosecution of complaints against California attorneys.

The State Bar Court (SBC): SBC serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys.

The Client Security Fund (CSF): CSF reimburses victims for losses due to attorney theft or acts equivalent to theft.

Mandatory Fee Arbitration: The State Bar administers a statewide program for the arbitration of fee disputes between attorneys and their clients.

Professional Competence: The Professional Competence program assists the State Bar's ongoing efforts to improve the quality of legal services by maintaining and enhancing the professional standards of California lawyers through a broad array of activities, such as recommending new and amended ethics rules and providing an ethics hotline telephone research service for attorneys.

The Lawyer Assistance Program (LAP): Senate Bill 479 (Burton) created the LAP, substantially expanding State Bar aid to attorneys with substance abuse or mental health problems. The mission of the LAP is to enhance public protection, maintain the integrity of the legal profession, and support recovering attorneys in their rehabilitation and competent practice of law.

Certification: The Office of Certification develops standards for certification and oversight of non-disciplinary regulatory programs relating to the practice of law and administers such programs.

Education: The State Bar's numerous educational activities are scattered throughout a number of offices (for example, Sections and the Cal Bar Journal). The Bar is one of the biggest Minimum Continuing Legal Education (MCLE) providers in the state, offering hundreds of classes, seminars and workshops to attorneys annually to help them meet those requirements.

General Fund and Membership Fees: Most of the 2002 annual membership fee of \$390 supports the State Bar's General Fund. In 2002, General Fund expenditures totaled \$43,311,000, which included both program costs and administrative support. Of this amount, \$34,287,000 was expended directly (operating budgets which include personnel costs) on General Fund programs. Administrative support for all programs totaled \$9,024,000.

OFFICE OF THE CHIEF TRIAL COUNSEL

The State Bar Board of Governors, through its Regulation, Admissions and Discipline Oversight Committee, has oversight responsibility over the State Bar's disciplinary activities. The Chief Trial Counsel, who reports directly to this Board Committee pursuant to statute, is responsible for the overall structure, goals and management of OCTC. The various disciplinary units within the Office (Intake, Investigations and Trials) screen, review, analyze, investigate and prosecute allegations of attorney misconduct.

Intake

The Intake Unit receives allegations of attorney misconduct made by the consumer. The unit also receives statutorily mandated reports about attorneys, including reports of criminal convictions, sanctions, contempt and judgments for fraud, misrepresentation and breach of fiduciary duty.

Receipt of Inquiries

The Intake Unit is generally the initial contact point through which a member of the public initiates a complaint against an attorney, or determines whether a disciplinary complaint is appropriate. The vast majority of these initial contacts are made through the office's toll-free 1-800 telephone line (1-800-843-9053). During the year 2002, 110,343¹ calls were received at this number.

An extensive phone tree guides callers to information to address their specific concerns or issues. Callers hear pre-recorded messages and receive answers to the most frequently asked questions. Callers can also order complaint forms without speaking directly to staff, freeing staff to respond to callers with more complex issues. The phone tree is available in both English and Spanish. The Office of the Chief Trial Counsel also has staff on call who speak Spanish, Korean, Tagalog, Russian, Hungarian, Cantonese and Mandarin for callers who need assistance in those languages. Translators can be arranged for complainants with other language needs. The Office of the Chief Trial Counsel provides these translation services at no charge to complainants to assist with spoken and written communications.

The State Bar's web site, <http://www.calbar.ca.gov>, contains extensive information on the attorney discipline system in California and provides the attorney complaint form digitally for those who wish to download it.

Experienced attorneys in the Intake Unit conduct initial evaluations of all matters entering the discipline system to determine if a violation of the State Bar Act or California Rules of Professional Conduct is alleged.

¹ These 110,343 calls are those that reached the phone tree. During 2002, there were 143,612 attempts to reach the phone line; 33,269 of those callers received busy signals.

Even if a violation is alleged, OCTC recognizes that many matters entering the system do not rise to a level warranting formal discipline. As a result, an important function of the Intake Unit is to identify cases for non-disciplinary disposition. This early identification allows low priority matters to be given a prompt resolution, clears them out of the discipline system with a minimal use of investigative or prosecutorial resources, and allows the overall resources of the Office to focus on the most egregious cases.

In assessing the priority of cases, attorneys in the Intake Unit consider the seriousness of the alleged misconduct and the degree of harm to clients, the public or the administration of justice as a result of the alleged misconduct. If an inquiry does allege a violation, and if it is a serious case, Intake forwards the inquiry to the Investigations Unit.

The following table gives basic data from the Intake Unit for 1997-2002.

Complaint Intake: Basic Data						
	1997	1998	1999	2000	2001	2002
Total phone calls received by the phone tree	138,239	49,662*	91,000**	109,259	110,120	110,343
Inquiries	15,164	8,040	8,405	10,846	11,138	11,784
Inquiries/reportable actions advanced to complaint status (sent to Investigations)	5,811	1,876	2,055	4,033	3,929	4,716
Average pendency of days for resolved inquiries	N/A	N/A	N/A	62	64	49
Average pendency of days for open inquiries	N/A	N/A	N/A	32	33	36
*Represents January to June 1998						
**Average for year. Complete call records were not available through all of 1999.						

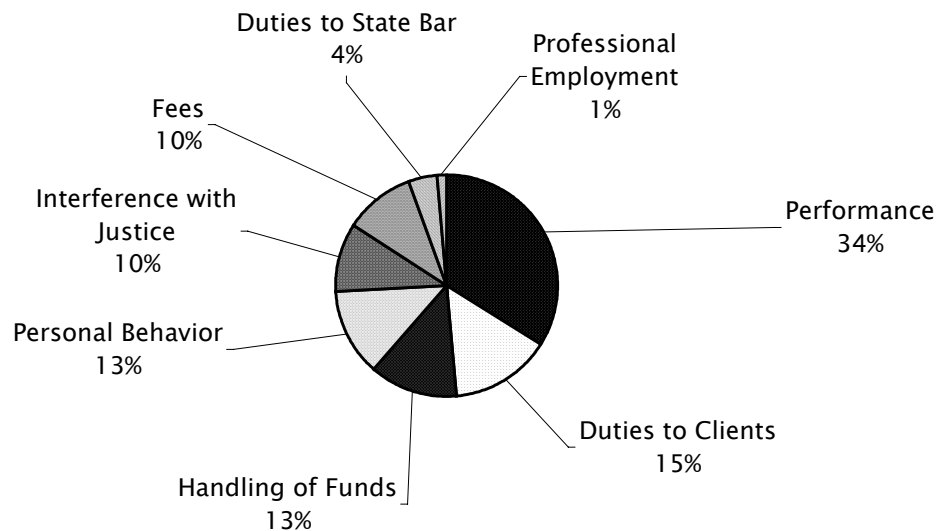
OCTC categorizes complainants' initial allegations of misconduct into eight areas. Historically, most of the complaints allege misconduct related to performance. The chart below shows the number of complaints per area in the past six years.

Complaint Allegations 1999-2002						
	1997	1998	1999*	2000	2001	2002
Performance	5,209	2,345	6,251	3,407	3,178	4,097
Duties to clients	2,370	908	3,084	1,464	1,564	1,753
Handling of funds	1,626	763	2,781	1,205	1,155	1,559
Personal behavior	1,290	557	1,845	996	1,062	1,529

Interference with justice	1,047	369	1,421	995	962	1,202
Fees	1,172	541	1,690	918	940	1,230
Duties to State Bar	832	242	1,185	575	438	511
Professional employment	213	57	202	108	85	170
TOTAL	13,759	5,782	18,459	9,667	9,384	12,051
* Represents data for July 1998 to December 1999.						

The percentage of complaints received in 2002 in each of the areas is shown in the following chart.

2002 Complaint Allegations



Possible resolutions for inquiries include forwarding the inquiry to another unit in OCTC for investigation and possible prosecution, closing the inquiry, and referring the complaining witness to another agency. As demonstrated below, in 2002, approximately 27% were forwarded to the Investigations Unit for further investigation. Another 47% of inquiries were closed due to insufficient findings or proof. The remaining 26% were moved out of Intake in a variety of ways. The following table indicates the specific resolution of inquiries for 1997-2002.

Inquiry Resolution						
	1997	1998	1999	2000	2001	2002
Alternative Dispute Resolution	0	0	0	0	0	27

Certified court reporter	0	0	45	2	2	1
Closed with communication letter	130	71	111	84	62	55
Coding Errors	0	0	5	0	0	0
Complaining witness' failure to cooperate	78	40	262	310	384	392
Criminal conviction complaint	0	0	444	316	633	612
Death of complaining witness	2	0	0	1	1	0
Death of respondent	21	13	19	27	14	39
Debt Letter: witness fees, court reporter	0	3	0	44	11	9
Decline	0	0	0	0	0	0
Directional letter	297	113	1	0	1	0
Disbarment in separate matter	41	15	31	47	22	37
Duplicate complaint	135	40	135	116	100	156
Error	45	11	33	54	76	79
Expert witness	0	0	48	11	1	0
Family support referral	5	4	9	3	2	1
Fee arbitration award referral	5	3	14	8	7	6
Fee Arbitration matter	425	235	548	585	532	481
Incivility program	1	2	0	0	0	0
Inquiry advanced to investigation (not reportable actions)	5189	1608	1639	2889	3089	3656
Insufficient evidence	4061	2027	2917	3358	3773	5400
Insufficient patient/client information received	253	98	310	143	163	148
Lack of jurisdiction	267	167	96	119	126	285
Lozada decision	0	0	5	6	5	10
Matter being monitored as a criminal conviction	7	2	12	5	3	0
Matter resolved between complaining witness and Respondent	757	259	378	210	207	233
Monitored as a reportable action	16	11	0	2	0	0
No communication by respondent	0	0	5	0	0	0
No complaint articulated	297	113	125	77	104	131
No merit	656	352	337	596	369	191
Not sufficient proof	1316	666	653	1280	1305	1396
Pending investigation	3	0	0	0	0	0
Pre petition for reinstatement	0	0	5	13	22	10

Purged, complaint form not returned	446	98	1	0	0	0
Referred	0	1	29	17	21	5
Releases/Satisfaction of Judgment	0	0	12	2	1	1
Resigned charges pending	166	103	98	157	230	280
Resource Letter	--	--	388	310	205	131
Return of file letters sent	478	199	382	467	494	559
Rule of limitation closure	72	42	49	39	65	79
Substance abuse program	106	0	18	38	0	0
Termination	1	0	0	0	0	0
Third-party service provider	0	0	30	6	20	49
Unable to locate complaining witness	2	8	39	61	5	5
Warning letter to respondent ²	0	0	0	0	0	27
TOTAL	15,308	6,422	9,245	11,402	14,056	14,491

Reportable Actions

Attorneys, the courts, financial institutions and insurance companies have a statutory duty to report certain specific information to the State Bar. In particular, (1) attorneys are charged with reporting, among other things, lawsuits filed against them, criminal convictions, and professional misconduct in another jurisdiction; (2) financial institutions report insufficient funds activity involving an attorney client trust account; (3) insurance companies report malpractice claims and filings and awards; and (4) courts report judicial sanctions over \$1,000, except for failure to make discovery. The following chart shows the numbers of each type of "reportable action" reported to the bar in 1997-2002.

Reportable Actions						
Reported by Banks, Courts, Insurers and Attorney Self Reports						
	1997	1998	1999	2000	2001	2002
Banks	3623	4260	4417	3595	2853	3229
Courts	245	104	149	152	108	156
Insurers	921	349	900*	307	398	416
Attorneys-self reports	173	81	97	121	120	97
TOTAL	4789	4713	5563	4175	3479	3898
*Estimated						

Conviction Monitoring

If a member is charged with a felony or misdemeanor, the prosecuting agency or the clerk of the court will generally advise the State Bar. OCTC monitors the criminal matter

² The warning letter was reinstituted in the summer of 2002 as a non-disciplinary option for disposition of a minor or technical violation by a member.

to final disposition, and if a conviction occurs, OCTC evaluates for forwarding to the State Bar Court as appropriate. If the crime involves moral turpitude, or is a felony, the State Bar Court may issue an order placing the member on interim suspension or make a recommendation to the California Supreme Court that the member be summarily disbarred.

Criminal Case Tracking Activity						
	1997	1998	1999	2000	2001	2002
Received during year	319	208	235	266	204	278
Closed during year	270	243	177	206	314	423
Pending year end	374	334	392	478	392	263
Convictions transmitted to State Bar Court	136	70	80	92	92	89

Probation Monitoring

The probation monitoring function of the State Bar has been housed at different times with both the State Bar Court and with OCTC. In 2002, it was part of OCTC's Intake Unit where four deputies, under the supervision of an Attorney, opened and maintained files on probationer attorneys with conditions including: filing quarterly reports, attending Ethics and/ or Client Trust Accounting School, making restitution, and complying with Rule 955³ of the Rules of Court. As appropriate, the probation monitors referred violations to the Trials Unit.

Ethics School/Client Trust Accounting School

As part and parcel of conditions of probation, attorney members are required to attend a day-long course featuring the identification of and solutions to common ethical issues faced by the practitioner. The course is administered in and scheduled by the Intake Unit. Instructors are experienced prosecutors who interact with the members in discussing the forming of the attorney-client relationship, the operational details of the relationship (fees, retainer agreements, scope of employment), working the case competently, the end of the relationship and duties throughout it. A three-hour component of the course, focused on Client Trust Account concepts, is given separately. In recent years, the courses have been made available to members who have not been disciplined to assist them in avoiding the most common ethical mistakes. MCLE credit is available to attendees. During 2002, 13 courses each of Ethics School and Client Trust Accounting School were offered, 352 members attended Ethics School, and 170 members attended Client Trust Accounting School.

³ Rule 955 outlines the duties of disbarred, resigned, or suspended attorneys.

Investigations

The Investigations Unit receives and investigates priority cases forwarded from Intake. In 2002, the Investigations unit received 4095 new matters and resolved 4852.

Business and Professions Code Section 6094.5 mandates a normative goal that State Bar investigations be completed within six months for non-complex matters and twelve months for matters designated complex. The Statute also requires that the State Bar issue an annual report quantifying the pendency of open complaints at year's end. The following chart fulfills the reporting requirement of Section 6094.5.

Pendency of Open Complaints at Year's End						
	1997	1998	1999	2000	2001	2002
0-6 months	1681	6	916	1017	1328	1312
7-9 months	482	435	372	389	306	279
10-12 months	320	658	248	224	252	138
13-21 months	320	658	478	320	330	95
21 months plus	58	318	820	263	147	119
TOTAL	2693	2426	2384	2213	2363	1943
TOTAL pending more than 6 months	1012	2420	1918	1196	1034	631
"Backlog" according to statutory definitions	253	2217	1736	1340	809	401
Average pendency of days for open complaints	N/A	N/A	N/A	324	232	168
Average pendency of days for closed complaints	N/A	N/A	N/A	268	268	210

Trials

In 2002, OCTC's trials units were comprised of a General Trials Unit in Los Angeles, a Fast Track, Insurance Fraud/ Attorney UPL Unit in Los Angeles, an appellate team in Los Angeles, and the San Francisco Unit's Trials team and Fast Track team.

As of December 31, 2002, the trials units had 929 cases pending filing in State Bar Court. These cases involved 544 respondents.

General Trials

The Los Angeles General Trials Unit is responsible for the formal prosecution of the vast majority of matters sent forward by the Investigation Unit. The San Francisco General Trials Team is responsible for the prosecution of those investigation matters geographically based in the northern part of the state.

Fast Track, Insurance Fraud and UPL

The Fast Track teams and the current incarnation of the Insurance Fraud/ UPL team were created in January 2002. The fast track teams were charged with the mission of identifying and taking swift action against attorneys who committed serious misconduct and whose continuing practice constituted a threat of substantial harm to the public. In 2002, the Los Angeles and San Francisco teams cumulatively brought action against 28 attorneys. Those actions involved 438 investigation matters.

The Insurance Fraud team handles a wide variety of cases including those involving auto insurance fraud, worker's compensation insurance fraud, and disability insurance fraud. It works closely with the Fraud Division of the State Department of Insurance, and with the fraud divisions of local district attorney's offices. Cases are both prosecuted in the State Bar Court and are referred to local agencies for prosecution. The team opened 118 Insurance Fraud cases and closed 75. The team referred 108 cases to law enforcement.

The UPL unit investigates allegations of unauthorized practice of law made against both former attorneys and members of the bar who are not entitled to practice law. Cases against former members, if the evidence warrants, are referred to local agencies for prosecution. Cases against non-entitled current members are, for the most part, prosecuted in the State Bar Court. Some of these cases, however, are also referred to local agencies for prosecution. During 2002, the team opened 160 UPL matters, filed 7 of these matters and closed 55.

Appellate Team

After a case has been decided, the State Bar or the respondent attorney has the right to an appeal. The Appellate Team is comprised of attorneys responsible for handling matters pending before the Review Department of the State Bar Court. It is housed in

the Los Angeles Office, with additional support, as needed, from attorneys in the San Francisco office. This team handles both final and interlocutory appeals.

The following chart reflects the resolutions of discipline cases by the Office of the Chief Trial Counsel Trials teams over the past six years.

Office of the Chief Trial Counsel Dispositions						
	1997	1998	1999	2000	2001	2002
Admonitions	0	0	0	0	0	0
Warning Letter	915	423	21	0	0	69
Directional Letter	601	206	6	0	0	0
Resource Letter	-	-	413	401	117	98
Agreement in Lieu of Discipline	138	82	19	35	76	39
Dismissal	3438	2861	2355	2252	2216	2867
Termination	810	523	340	482	522	587
Resignation tendered with charges pending	115	51	68	93	102	88
Stipulated discipline filed	99	44	36	221 ⁴	137 ⁵	146 ⁶
Notice of Disciplinary charges filed	584	248	174	383 ³	309 ⁴	402 ⁵

The following chart indicates the other litigation matters handled by the trials teams over the past six years.

Other Litigation Matters - Received						
	1997	1998	1999	2000	2001	2002
Probation revocation matters	305	61	174	129	104	74
Rule 9-101 violation matters	98	35	56	26	48	29
B & P Code Section 6049.1 matters	25	17	11	39	31	23
Moral character matters	5	4	8	6	9	7
Rule 955 violation matters	91	55	58	97	76	75
Reinstatement matters	12	16	12	17	12	16
B & P Code Section 6007(b)(1) matters	3	0	0	0	1	0
B & P Code Section 6007(b)(2) matters	8	2	0	3	0	6
B & P Code Section 6007(b)(3) matters	12	5	10	3	13	3
B & P Code Section 6007(b)(2) & (3) - reactive matters	0	3	3	1	1	2
B & P Code Section 6007(c) matters	11	1	11	7	8	23
Standard 1.4(c)(ii) matters	3	12	10	6	9	13
TOTAL	573	211	353	334	312	271

⁴ The 221 stipulations filed represent 336 complaints and the 383 notices filed represent 717 complaints.

⁵ The 137 stipulations filed represent 386 complaints and the 309 notices filed represent 610 complaints.

⁶ The 146 stipulations filed represent 238 complaints and the 402 notices filed represent 733 complaints.

**Proceedings pursuant to Business and Professions Code sections 6180, et seq.
and 6190, et seq.**

The Business and Professions Code authorizes interested parties, including the State Bar of California, to petition the Superior Court to assume jurisdiction over the law practices of deceased, disciplined and inactive (section 6180) or disabled lawyers (section 6190), where there are unfinished client matters and the interests of a client or others might be prejudiced if the court does not assume jurisdiction over the practice. The petition may be consented to by the subject attorney, but need not be. Where consent is not provided, the Court will conduct a contested hearing at which time objections are considered.

If the Bar is the petitioning party and the application is granted, the Court will assign to the Office of the Chief Trial Counsel the responsibility of notifying clients, courts and parties of the assumption, taking emergency action to protect clients' interest, arranging for the transfer of files and other property back to clients and the appointment of receivers to oversee trust and other bank accounts, and taking other necessary action as deemed appropriate by the Court.

In 2002, the Office of the Chief Trial counsel filed a total of 35 actions in the Superior Court under sections 6180 and 6190. The overwhelming majority of these petitions were granted.

Although the State Bar has traditionally relied upon section 6190 to petition the superior courts to assume jurisdiction over the practice of those attorneys who have become physically or mentally ill, or abandoned their practice, section 6190 expressly does not limit itself to those listed situations. In fact, the statute defines incapacity to include *any reason*.

In 2002, OCTC's fast track teams successfully relied upon section 6190 in 11 cases to petition the superior courts to assume jurisdiction over the law practices of attorneys who had de facto abandoned their practices to cappers or who have engaged in such serious professional misconduct or crimes as to render themselves incapable of protecting the interests of their clients. Once a superior court issued a final order assuming jurisdiction over a law practice, the fast track teams were able to file an application in the State Bar Court pursuant to section 6007(c) to involuntarily enroll the attorney as an inactive member.

Priorities for 2002

In our 2001 report, we listed priorities for 2002. Those priorities are reprinted below in bold and our strides to meet them are described:

- **Alternative Dispute Resolution (ADR): ADR for low-level infractions should provide a viable and appropriate alternative to the existing options of dismissing a case or filing a Notice of Disciplinary Charges. OCTC is working with the Office of the Executive Director to develop a proposal(s) to submit to the Board by the end of Summer, 2002, if not sooner.**

OCTC conducted a pilot mediation program over a three-month period from the end of May through September 1, 2002. OCTC's goal was to refer 20 to 30 files to the outside mediation agency, California Community Dispute Services (CCDS), and to successfully resolve the majority of those files through the mediation process. Both of these goals were met. OCTC referred a total of 27 files to CCDS during the pilot program. 70% of these files were resolved at the conclusion of the three-month period.

All participants in the mediation pilot project were asked to complete an evaluation form. In those returned to OCTC, the majority of clients and attorneys reported that they were "very satisfied" with the outcome of mediation. Most also stated that they were very satisfied with the fairness of the process, the overall timeliness of the process and the appropriateness of mediation as a way to resolve their dispute. They agreed that they would recommend mediation to others. One attorney noted: "I believe this is the easiest method to solve disputes. The parties resolve the issues among themselves and are not pressured. I felt very comfortable." Another satisfied participant stated: "The focus is on the solution rather than the problem."

OCTC believes that mediation has benefits for both clients and respondents. An ADR/Mediation Program is authorized under Business and Professions Code section 6086.14 and Rules 4402 through 4407 of the Rules of Procedure State Bar of California which provides for the creation of an alternative dispute resolution discipline mediation program to resolve those complaints against attorneys which do not warrant the institution of formal investigation or prosecution. During 2003, we will investigate the possibility of implementing a permanent program.

- **Drug Court: OCTC is working with the State Bar Court (SBC) and the Director of the Attorney Diversion and Assistance Program (ADAP) to develop a comprehensive inter-disciplinary approach to addressing the problem of substance abuse that is related to attorney misconduct. The proposal should be completed and ready for submission to the Board by the end of Summer, 2002, if not sooner.**

The Chief Trial Counsel (CTC) has mandated full cooperation with the ongoing development of both the Lawyer Assistance Program (LAP)⁷ and the State Bar Court's pilot program. To that end, he has elected to defer promulgation of written rules and policies until after the first year, in order to remain as flexible and responsive as possible to the Program and court concerns. In the meantime, OCTC has regular discussions and collaborates closely with, the LAP, the State Bar Court and respondents' counsel regarding optimum policies and procedures.

- **Vertical Prosecution:** As of January 1, 2002, OCTC has moved to a "vertical prosecution" model. Simply stated this means that a Deputy Trial Counsel is assigned to a case and oversees it from the moment it becomes an investigation, through trial, settlement or dismissal. In conjunction with the investigator(s) assigned to the case, an initial investigation plan is developed and monitored. When the investigation is completed, the assigned Deputy Trial Counsel is responsible for drafting the Notice of Disciplinary Charges and presenting the case to the State Bar Court. Also beginning January 1, 2002, was the implementation of specialty teams in the San Francisco and Los Angeles offices. These two teams are assigned the responsibility of identifying those respondents who constitute the most serious and immediate threat of harm to the public and focusing dedicated staff resources for a swift investigation and prosecution against them.

This new model functioned successfully throughout 2002. As addressed in the 2003 priority section below, this model will be further expanded upon in 2003.

- **Data Collection:** All data collection mechanisms are under review to identify those areas where the information is not complete or those areas where the information is of little value compared to the time it takes to collect and assemble data. The purpose of the review is to determine how the data can be most effectively used in making resource allocation decisions, OCTC performance evaluation and program development or policy recommendations to the Board.

Great strides were made in this regard in 2002, primarily through the work of a Technology Workgroup created in March of 2002 to address this issue along with the other technology related needs and issues of the office. Improving the accuracy and accessibility of OCTC's data continues to be a priority in 2003.

- **Training:** Ongoing professional development training will be provided to as many OCTC staff as possible, within the restraints of the budget. Most particularly intake staff will be trained in mediation and customer service. Investigation staff will be further trained in investigation skills. Investigation staff and Trial staff will be trained in the use of CASEMAP software. Trial staff

⁷ The Attorney Diversion and Assistance Program was renamed the Lawyers' Assistance Program.

will be trained in advocacy skills appropriate to their level of experience. Management staff, including all supervisors, will be trained in performance based management and evaluation.

Office staff were surveyed in the first quarter of 2002 to assess training needs. Training was provided both by state bar staff and external consultants. In 2002, the large variety of training provided included, but was not limited to, training on: basic computer skills, substantive legal issues, trial advocacy, legal writing and research, management training, searching skills/ proprietary software (including CASEMAP, LEXIS, PACER), and organizational and motivational skills.

A training highlight for 2002 was the Performance Based Management Training offered to the Management team and the team leaders. This two-day training focused on the identification of "Key Result Areas", Objectives and Goals for each unique job in the organization, and the creation of performance-based measurements for all staff. OCTC is in the process of implementing these performance measurements throughout the organization.

Priorities for 2003

The following areas of program/ operation development under consideration, review and initial development during 2002 will continue to enhance OCTC's efficiency and effectiveness when fully implemented in 2003.

Mediation:

As addressed above, OCTC is pursuing options for implementing a permanent mediation program in 2003.

Vertical prosecution:

In March of 2003, OCTC implemented an even more verticalized prosecution model. Rather than separate investigations and trials units working closely together, each enforcement team now is a blend of attorneys and investigators, reporting to the same manager.

Data Collection:

As mentioned above, improving the accuracy and accessibility of OCTC's data collection continues to be a priority in 2003. The Technology Workgroup leads this effort for the office.

Policy Review and Revision:

OCTC has created a workgroup tasked with reviewing and revising all documents setting forth office policy and procedures. This group will make sure that all materials are up to date, comprehensive, and easily accessible, and that they provide clear direction to staff on the expectations of the office.

Training:

OCTC has put a system into place to survey managers every year regarding needs of their staff so that training can be planned in the annual budgeting process.

Drug court:

OCTC will continue to work with LAP and the State Bar Court and support any efforts to further the program's success.

STATE BAR COURT

The State Bar Court serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys. It is the mission of the State Bar Court to hear and decide cases fairly, correctly and efficiently for the protection of the public, the courts and the legal profession. In 2002, the State Bar Court started its 14th year as the nation's first (and only) full-time attorney disciplinary and regulatory court.

The State Bar Court has authority to impose public and private reprimands upon California attorneys who are found to have violated the disciplinary provisions of the California State Bar Act or the Rules of Professional Conduct approved by the California Supreme Court. In cases involving the imposition of more serious degrees of discipline, such as disbarment or suspension, the State Bar Court makes findings of fact, conclusions of law and a recommendation for discipline that is transmitted to the California Supreme Court for review and adoption. In the vast majority of cases, the Supreme Court accepts and imposes the State Bar Court's recommendation. However, the Supreme Court may, in its discretion, modify the State Bar Court's factual findings, legal conclusions or recommended discipline or, in the alternative, return the matter to the State Bar Court for further hearing or other action.

The State Bar Court has two venues (San Francisco and Los Angeles) and is composed of two departments – the Hearing Department and the Review Department. The Hearing Department is the trial level of the State Bar Court and is comprised of five full-time judges (three in Los Angeles and two in San Francisco). Two of the hearing judges are appointed by the Supreme Court. The Governor, Speaker of the Assembly and the Senate Committee on Rules each appoint one hearing judge.

The Review Department is the appellate level of the State Bar Court. The three-member Review Department consists of the Presiding Judge and two review judges. All of the judges of the Review Department are appointed by the Supreme Court.

Two new Los Angeles-based hearing judges were appointed in November 2002, and took office on January 2, 2003. The Honorable Alban I. Niles was appointed to the State Bar Court by the Honorable Herb J. Wesson, Speaker of the Assembly. The Honorable Richard A. Honn was appointed to the State Bar Court by the California Supreme Court.

While the number of new cases filed in the State Bar Court in 2002 increased slightly from the number of cases filed in 2001 (i.e., from 917 cases in 2001 to 944 cases in 2002), the number of cases disposed by the State Bar Court and the Supreme Court decreased during the same period (i.e., from 1,169 cases in 2001 to 891 cases in 2002). The primary reason for this decrease is the departures in May 2002 and December 2002 of State Bar Court Hearing Judges Stanford E. Reichert and Paul A. Bacigalupo, respectively. Judge Reichert and Judge Bacigalupo left the State Bar

Court to take judicial positions in the Los Angeles Superior Court as a Court Commissioner and Superior Court Judge, respectively. As a result of these departures and the lower number of dispositions in 2002, the average number of cases pending in the State Bar Court increased in 2002 but still remains below the average caseload that existed prior to the virtual shutdown of the disciplinary system between June 1998 and March 1999.

During 2002, the State Bar Court achieved the following key goals and objectives:

- ✓ With the approval of the California Supreme Court and the Board of Governors of the State Bar, implemented the State Bar Court Pilot Program for Respondents with Substance Abuse or Mental Health Issues for the treatment and rehabilitation of attorneys in the discipline process;
- ✓ Coordinated the recruitment and evaluation process for the Supreme Court's Applicant Evaluation and Nomination Committee, leading to the appointment in February 2002 of State Bar Court Review Judge Judith A. Epstein and to the November 2002 reappointment of State Bar Court Review Judge Madge S. Watai and the appointment of State Bar Court Hearing Judges Alban I. Niles and Richard A. Honn;
- ✓ Maintained the average pendency of cases in the State Bar Court Hearing Department at less than six months;
- ✓ Continued publication of the *California State Bar Court Reporter* containing the published opinions of the State Bar Court Review Department in attorney disciplinary and regulatory proceedings; and
- ✓ Continued work on the development of a comprehensive case management system for the State Bar Court.

The following charts reflect the numbers of cases filed in the State Bar Court during 2002, as compared to previous years, along with all interim and final dispositions issued by the State Bar Court and the California Supreme Court during 2002:

CASES FILED IN THE STATE BAR COURT

Disciplinary Matters						
	1997	1998	1999	2000	2001	2002
Original matters	686	298	245	547	534	555
Conviction referral	139	73	83	96	94	89
Rule 955 violation	50	31	53	53	59	65
Rule 1-110 violation (former Rule 9-101)	34	11	44	17	16	17
Probation Revocation	41	8	34	30	28	22
Other Jurisdiction 6049.1	11	11	9	19	14	23
Subtotals	961	432	468	762	745	771

Regulatory Matters						
Arbitration Enforcement	1	2	0	4	18	19
Resignation with charges pending	115	52	69	91	101	88
Trust re practice	0	0	0	0	0	0
Inactive enrollment 6007(c)	11	2	7	7	7	13
Inactive enrollment 6007(b)	3	0	0	0	1	0
Inactive enrollment 6007(b)1	0	0	0	0	0	0
Inactive enrollment 6007(b)2	7	2	0	3	0	5
Inactive enrollment 6007(b)3	11	4	8	5	12	2
Interim remedies 6007(h)	0	0	0	0	0	2
Reactive 6007(b)1	0	0	1	0	0	0
Reactive 6007(b)2	0	2	2	0	1	0
Reactive 6007(b)3	0	1	1	1	0	2
Reactive 6007(c)	0	1	0	0	0	0
Reactive Arbitration Enforcement	0	1	0	0	2	3
Standard 1.4(c)(ii)	3	12	10	6	9	14
Reinstatement	12	16	12	17	12	17
Moral Character	5	4	8	6	9	8
Lawyer Referral Service	0	0	1	0	0	0
Legal Specialization	0	0	0	1	0	0
Subtotals	168	99	119	141	172	173

TOTALS	1,129	531	587	903	917	944
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STATE BAR COURT INTERIM DISPOSITIONS

Disciplinary Matters						
	1997	1998	1999	2000	2001	2002
Augment to include discipline	38	33	14	17	13	18
Conviction referral	109	57	51	73	74	72
Finding of Moral Turpitude	0	0	1	0	0	0
Grant stay of interim suspension	3	1	3	0	0	0
Grant stay of suspension	0	0	6	0	3	0
Grant temporary stay of interim suspension	9	1	2	1	0	3
Grant temporary stay of suspension	11	2	5	18	4	14
Interim Suspension	54	32	39	45	35	26
Interim Suspension and Referral	0	2	5	5	4	8
Suspension/failure to pass professional responsibility examination	73	30	70	40	42	44
Modify order	2	0	0	0	0	0
Moral turpitude not found	0	0	0	0	0	0
Remand for hearing	8	0	0	1	0	1
Terminate Interim Suspension*	0	1	0	0	0	5
Transmit Final	0	0	0	0	0	0
Retransfer to active pursuant to 6007(c)*	0	0	0	0	0	1
Retransfer to active pursuant to 6007(e)*	0	0	0	0	0	16
Rejected Stipulation	0	0	0	0	0	36
Transfer to Inactive pursuant to 6007(c)*	0	0	0	0	0	64
Transfer to Inactive pursuant to 6007(d)*	0	0	0	0	0	11
Transfer to Inactive pursuant to 6007(e)*	0	0	0	0	0	135
Vacate previous order	16	0	0	0	0	0
Subtotals	323	159	196	200	175	454

Regulatory Matters						
Restrict Practice 6007(h)	1	0	3	3	3	5
Transfer Inactive 6007(d)*	14	0	4	15	5	0
Transfer Inactive 6007(e)*	124	121	104	137	131	0
Subtotals	139	121	111	155	139	5

TOTALS	462	280	307	355	314	459
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* Effective 2002, these items have been re-categorized as Interim Dispositions

STATE BAR COURT FINAL DISPOSITIONS

Disciplinary Dispositions						
	1997	1998	1999	2000	2001	2002
Admonition	0	0	0	0	0	0
Deny other petitions	27	6	0	0	0	0
Deny reconsideration	0	0	0	0	0	0
Dismissal	139	120	83	45	42	35
Extend condition of reproof	0	1	0	0	0	0
Extend ordered effective date	0	0	0	0	0	0
Extend probation	0	0	1	3	4	2
Extend time to pass professional responsibility examination	42	14	46	18	31	26
Extension to comply with Rule 955	0	1	0	0	0	0
Grant/deny other requests in part	0	0	0	0	0	0
Grant temporary stay of suspension	0	8	0	0	0	0
Modify effective date of suspension	0	0	0	0	0	0
Modify order	0	33	9	28	17	3
Modify decision	0	20	0	0	2	0
Modify opinion	2	0	0	0	0	0
Modify probation	4	5	11	1	1	4
Modify stipulation	0	63	20	31	57	65
Moral Turpitude not found	1	0	0	0	0	0
No additional discipline	1	0	0	0	0	0
Private reproof	4	2	0	4	0	0
Private reproof with conditions	115	77	31	70	122	62
Public reproof	2	0	1	1	0	0
Public reproof with conditions	64	33	20	43	50	44
Set aside dismissal	1	1	1	0	0	0
Summary disbarment	6	0	5	0	0	0
Terminate conviction proceeding	1	1	1	0	0	0
Terminate interim suspension*	15	9	6	3	4	0
Termination - death	8	0	1	6	6	4
Termination - disbarment	20	1	4	0	3	19
Termination - resignation	130	54	55	67	113	77
Vacate previous order	33	41	9	15	5	6
Withdrawn	6	0	1	0	0	0
Subtotals	621	490	305	335	457	347

STATE BAR COURT FINAL DISPOSITONS

Regulatory Dispositions						
	1997	1998	1999	2000	2001	2002
Decline retransfer 1.4 (c)(ii)	1	0	0	1	0	1
Decline transfer 6007(b)	3	1	1	0	0	0
Decline transfer 6007(c)	0	0	2	0	0	2
Decline transfer 6007(d)	0	0	0	0	0	0
Decline transfer Arbitration Enforcement						1
Deny admission	5	4	2	1	2	1
Deny petition/application	1	0	2	0	0	4
Deny reinstatement	10	2	3	4	5	3
Deny petition to shorten time to file petition for reinstatement	0	0	0	0	0	0
Dismissal	6	3	8	6	7	9
Grant admission	2	2	0	1	0	3
Grant Legal Specialization	1	0	0	0	0	0
Grant petition to shorten time to file petition for reinstatement	0	0	0	0	0	0
Grant trust fund	0	0	1	0	0	0
Modify Decision	0	0	0	0	2	0
Modify Stipulation	0	0	0	0	1	0
Modify order	0	0	3	1	0	2
Restrict practice - 6007(h)	7	0	0	0	0	0
Retransfer active-Arbitration Enforcement	0	1	0	0	2	2
Relief from Actual Suspension -- 1.4(c)(ii)	7	7	12	6	6	5
Retransfer active 6007(b)	2	3	4	0	2	2
Retransfer active 6007(c)	0	1	0	2	0	0
Retransfer active 6007(d)	0	0	0	0	1	0
Retransfer active 6007(e)*	17	21	5	19	27	0
Terminate moral character proceedings	0	0	1	0	1	0
Termination-death	0	0	1	0	1	1
Termination-disbarment	2	0	0	0	0	0
Termination-resignation	1	0	0	0	0	4
Transfer inactive-Arbitration Enforcement	1	2	0	2	9	14
Transfer inactive 6007(b)	18	6	3	8	9	5
Transfer inactive 6007(c)*	82	47	52	85	50	9
Transfer inactive 6007(d)	0	9	0	0	0	0
Transfer inactive 6007(e)	0	0	0	0	0	0
Vacate Previous Order	1	0	1	0	0	0
Withdrawn	4	3	2	5	6	18
Subtotals	171	112	103	141	131	86
TOTALS	792	602	408	446	588	433

*Effective 2002,some entries of this type have been re-categorized as Interim Disciplinary Dispositions

CALIFORNIA SUPREME COURT INTERIM DISPOSITIONS

Disciplinary Dispositions						
	1997	1998	1999	2000	2001	2002
Grant writ of review	0	0	2	0	0	0
Remand for Hearing	0	2	0	4	1	0
Subtotals	0	2	2	4	1	0

Regulatory Dispositions						
Granted writ of review	0	0	0	0	0	0
Remand for Hearing	0	0	0	0	0	0
Subtotals	0	0	0	0	0	0

TOTALS	0	2	2	4	1	0
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CALIFORNIA SUPREME COURT FINAL DISPOSITIONS

Disciplinary Dispositions						
	1997	1998	1999	2000	2001	2002
Deny petition for review, rehearing, reconsideration	7	8	0	0	0	0
Disbarment	76	96	38	79	47	59
Summary Disbarment	2	4	2	3	8	2
Dismissal	2	0	1	8	1	1
Early Termination of Probation	0	0	0	0	3	0
Extend probation	3	6	1	3	3	6
Granted writ of Review	0	1	0	0	0	0
License to practice cancelled	0	0	0	0	0	0
Modify opinion	0	0	0	0	0	0
Modify order	9	0	2	0	0	1
Modify probation	0	0	4	0	0	0
Probation - no actual suspension	1	2	1	0	0	0
Resignation with charges pending	116	54	67	89	100	86
Revoke probation/actual suspension	24	13	7	14	13	10
Revoke probation/Stayed/Actual suspension	0	0	0	0	1	2
Suspension actual with probation	3	6	3	8	7	8
Suspension actual (without probation)	1	3	6	3	3	28
Suspension stayed/some actual suspension with probation	276	350	120	212	272	190
Suspension stayed/some actual suspension with no probation	0	0	0	0	4	0
Suspension stayed with conditions	3	2	2	1	3	0
Suspension stayed with probation	90	125	28	84	84	59
Suspension with conditions	12	1	5	17	13	1
Termination - death	0	0	2	0	1	2
Termination - disbarment	7	0	0	0	3	0
Termination - resignation	1	3	0	0	5	0
Vacate Previous Order	1	0	2	0	3	0
Subtotals	634	674	291	521	574	455

Regulatory Dispositions						
Deny petition/application	0	0	0	0	0	0
Grant reinstatement	8	5	6	5	6	2
Granted writ of Review	0	1	0	0	0	0
License to Practice Cancelled	0	0	0	0	1	1
Subtotals	8	6	6	5	7	3

TOTALS	642	680	297	526	581	458
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CLIENT SECURITY FUND

In 1972, the Client Security Fund was established by Bar-sponsored legislation in recognition that disciplinary measures, as well as civil and criminal proceedings, were often insufficient remedies to alleviate pecuniary losses caused by a lawyer's dishonest conduct in the practice of law. Thus, the Client Security Fund is designed as a remedy for legal consumers, in addition to, but separate from discipline. While the discipline system protects the public by disciplining and removing errant lawyers from the practice of law, the fund protects the public by focusing on individual victims. Since its inception, the fund has reimbursed applicants approximately \$56.5 million. In 2002, the fund paid \$6,597,057 on 782 awards.

Financed by a \$35 annual assessment added to the membership dues paid by California lawyers, the Client Security Fund reimburses victims up to \$50,000 for losses due to attorney theft. While the number of dishonest lawyers is extremely low, the losses suffered by clients can be devastating. The fund is a cost-effective way of providing reimbursement to victims that is generally not available from any other source. Furthermore, the fund provides the legal profession with a unique opportunity to promote public confidence in the administration of justice and the integrity of the legal profession.

The State Bar's authority to operate the Client Security Fund is found under section 6140.5 of the Business and Professions Code. Section 6140.5(a) requires the Board of Governors to maintain a Client Security Fund. The fund is currently governed by the Rules of Procedure, Client Security Fund Matters, adopted by the Board on December 21, 1985. Under these Rules, a seven-member Commission, appointed by the Board, acts as the Board's delegate in administering the fund. The rules set forth the scope and purpose of the fund, the authority of the Commission, the requirements for reimbursement, the application process, the confidentiality of fund records and judicial review of Commission decisions. An Applicant or Respondent lawyer may seek judicial review of a Final Decision of the Commission in the superior courts of the State under section 1094.5 of the Code of Civil Procedure.

As the chart below reflects, in 2002, the Client Security Fund received 1,300 new applications and processed 1,286 cases to closure which is an increase in both the numbers received and processed in 2001. The lower filing rates for 1998-1999 were due to the virtual shutdown of the discipline system during the fee bill crisis (i.e., June 1998 through March 1999).

Client Security Fund						
	1997	1998	1999	2000	2001	2002
Applications Filed	1217	652	611	1049	1114	1300
Amounts Requested	\$12,717,000	\$7,879,099	\$6,780,932	\$10,929,128	\$11,900,739	\$14,166,217
Applications Processed	1230	978	767	1095	1069	1286
Applications Paid	708	517	387	595	609	782
Amounts Paid	\$4,660,614	\$3,627,082	\$2,811,090	\$3,673,850	\$4,435,212	\$6,597,057

MANDATORY FEE ARBITRATION

Pursuant to Business & Professions Code section 6200 *et seq.*, the State Bar administers a statewide program for the arbitration of fee disputes between attorneys and their clients. In addition to processing requests for arbitration through the State Bar's own arbitration program, the Office of Mandatory Fee Arbitration is also responsible for overseeing the approximately 43 local bar association fee arbitration programs statewide. The Office provides information to all attorneys and clients concerning their respective rights and obligations under the mandatory fee arbitration program.

Further, the State Bar has exclusive jurisdiction to enforce arbitration awards requested by clients after an award for a refund of fees has become binding and final. Business & Professions Code section 6203, subdivision (d) authorizes the assessment of administrative penalties and the involuntary inactive enrollment of attorneys who fail to respond to the enforcement request. The Office of Mandatory Fee Arbitration processes clients' requests for enforcement resulting from fee arbitrations throughout the state. Both the State Bar arbitration and enforcement cases rely on a volunteer Presiding Arbitrator for procedural rulings as set forth in the rules of procedure.

The Office consists of a Director, three senior administrative assistants, and one administrative secretary. The staff handles all telephonic and written requests for information concerning fee arbitration and makes appropriate outside referrals, administers the State Bar's fee arbitration program, processes requests for enforcement of awards, filing motions in the State Bar Court for inactive enrollment of attorneys as appropriate.

The Office also staffs and coordinates the activities of the State Bar Standing Committee on Mandatory Fee Arbitration. The Committee consists of approximately 16 lawyer and public members, including the State Bar Presiding Arbitrator. It reports to the Board Committee on Regulation, Admission and Discipline. The Committee meets about eight times annually.

The Committee is responsible for reviewing case law and proposing new legislation affecting fee arbitration, providing policy guidance and assistance to the local bar programs, conducting training programs for fee arbitrators throughout the state, issuing written training materials for arbitrators and arbitration advisories, and presenting legal education courses on selected topics concerning attorney's fees and the fee arbitration program. All local and State Bar fee arbitration programs must obtain Board approval of its rules of procedures and any amendments made thereto.

KEY ACCOMPLISHMENTS OF THE COMMITTEE ON MANDATORY FEE ARBITRATION IN 2002:

Arbitrator Training Programs: During the course of the committee year, the Committee organized and presented a total of eight (8) three- hour fee arbitrator training programs. Free MCLE credit was offered to attorney arbitrators. A rotating panel of four Committee members present the training program. In addition, a binder of materials prepared by the Committee, featuring an arbitrator handbook and extensive case law summary and index, is distributed to the arbitrators who attend the program. One training program was offered to only lay arbitrators.

State Bar Arbitrator Recruitment Efforts: The State Bar Fee Arbitration panel consists of approximately 250 volunteer arbitrators, most of whom are lawyer arbitrators. As a result of ongoing efforts to recruit new arbitrators, new fee arbitrators were appointed by the Board to serve on the panel this year.

MCLE programs: The Committee presented three (3) programs for CLE credit through the local bar associations, one program for Century City Bar and two for the State Bar 2002 Annual Meeting in Monterey.

Arbitration Advisories: In addition to the MCLE programs, the Committee is responsible for identifying issues of administrative or legal significance in the area of fee arbitration and developing them into written advisories. The advisories are distributed to local bar program committees and administrators for dissemination to fee arbitrators. These advisories are also available to members and the public on the State Bar's website. The Committee published one advisory in 2002.

Advice to Local Bar Programs: The Committee provides advice and guidance to the 43 local bar fee arbitration programs in the state on an as-needed basis. The issues and questions presented are addressed in regularly scheduled meetings of the Committee. Most issues raised by the local programs are handled informally by the Office Director or the Presiding Arbitrator on a daily basis. The Office hosted a local bar administrators' roundtable session for fee arbitration program staff.

YEAR-END OPERATING STATEMENT - 12 months ending 12/31/02			
	Budget	Actual to date	Variance
Revenue	\$15,750	\$69,588	\$53,838
Operating Expense ⁸	\$482,690	\$436,127	\$46,563

CURRENT STAFFING

Director, Mandatory Fee Arbitration: 1

Senior Administrative Assistant: 3

Administrative Secretary: 1

⁸ New Expense for 2002: Local Bar Reimbursement for fee arbitration cases: approximately \$45, 000

Mandatory Fee Arbitration Program						
	1997	1998	1999	2000	2001	2002
Fee Arbitration Requests Filed with State Bar	310	177	73	166	142	133
Fee Arbitration Requests Assigned by Local Bar	2570	n/a	n/a	n/a	n/a	1710*
Requests for Enforcement of Award Filed	62	27	31	82	65	82
Arbitrator Training Sessions	5	3	n/a	8	9	8

* Number of cases reported to the Mandatory Fee Arbitration Program for reimbursement. Not all local bar programs requested reimbursement.

PROFESSIONAL COMPETENCE

The State Bar's ongoing Competency-based programs to maintain and improve the quality of legal services available in California are among its most important efforts in support of public protection and the effective administration of justice.

Rules of Professional Conduct

In 2002, the State Bar developed two proposed amendments to the Rules of Professional Conduct. One amendment addresses attorney conduct as a "whistle-blower" when representing a governmental organization and the other amendment addresses conflicts of interest in the insurance defense tripartite relationship.

In February 2002, the State Bar submitted to the Supreme Court of California for approval proposed amended rule 3-600 (Organization as Client). Proposed amended rule 3-600 was adopted by the State Bar Board of Governors at its January 26, 2002 meeting. The proposed amendments were intended to provide guidance to attorneys who serve as attorneys for governmental organizations by clarifying and expanding the permissive "up-the-ladder" reporting options included in the rule. This proposal was developed in response to the professional responsibility issues raised by Assembly Bill No. 363 ("AB 363"), a pending two-year bill introduced in 2001 by Assembly Member Darrell Steinberg entitled "The Public Agency Attorney Accountability Act." The attorney professional responsibility issue raised by AB 363 was characterized as whether an attorney representing a government agency may act as a "whistle-blower?"

In cooperation with Assembly Member Steinberg, the State Bar's Committee on Professional Responsibility and Conduct ("COPRAC") studied this issue with the helpful assistance of various interested parties including representatives of: the Administrative Office of the Courts, Office of Governmental Affairs; the Office of the California Attorney General; the City Attorneys Department of the League of California Cities; Public Employees for Environmental Responsibility; the Executive Committee of the State Bar Public Law Section; the California Association of Sanitation Agencies; and the County Counsels' Association of California. This cooperative effort conducted by COPRAC resulted in the proposal to amend rule 3-600. As proposed, the amended rule would have permitted, in limited certain circumstances, an attorney representing a government agency to report governmental misconduct to an appropriate oversight or law enforcement agency.

Upon consideration by the Supreme Court of California, the Court determined not to approve the State Bar's proposed amended rule. The Court's May 10, 2002 order indicated that approval was denied because the proposed modifications conflict with an attorney's statutory duty of confidentiality. Following the Court's disposition of the rule 3-600 proposal, the State Bar served as a technical resource to Assembly Member Steinberg and other interested parties in modifying AB 363 to codify, by its own terms, "whistle-blower" statutory language similar to the terms of the rule 3-600 proposal. This

revised AB 363 was passed by the Legislature but vetoed by California Governor Gray Davis on September 30, 2002. In his veto message, Governor Davis observed that: "While this bill is well intended, it chips away at the attorney-client relationship which is intended to foster candor between an attorney and client. It is critical that clients know they can disclose in confidence so they can receive appropriate advice from counsel."

At its meeting on May 4, 2002, the State Bar Board of Governors adopted proposed amendments to rule 3-310 (Avoiding the Representation of Adverse Interests). This proposal was developed in response to Business and Professions Code section 6068.11, requiring the State Bar to conduct a study, in consultation with representatives of the insurance defense bar, plaintiff's bar, the insurance industry and the Judicial Council, concerning the legal and professional responsibility conflict of interest issues arising from the decision of the California Court of Appeal in *State Farm Mutual Automobile Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App.4th 1422 [86 Cal.Rptr.2d 20], rev. denied (9/29/99) ("*State Farm*"). In *State Farm*, the court held that a law firm should be disqualified for bringing an action against an insurance company while representing a policyholder of that same company in an unrelated insurance defense case. The representation was found to be inconsistent with an attorney's duty of undivided loyalty.

The State Bar assigned COPRAC to conduct the study required by Business and Professions Code section 6068.11. Subsequently, the State Bar established a special Joint Task Force of the Judicial Council and State Bar Board of Governors ("Joint Task Force") to develop a recommendation for action. Both COPRAC and the Joint Task Force found that the key issue raised by Business and Professions Code section 6068.11 was that the decision in *State Farm* may be expanded in subsequent cases to find disqualifying conflicts of interest in representation settings other than that addressed in *State Farm* and which would be of concern to insurance defense counsel. The Joint Task Force recommended that the State Bar consider adoption of an amendment to the Discussion section of rule 3-310 intended to limit the rationale of *State Farm* to its facts.

The amendment to the Discussion section developed by the Joint Task Force and adopted by the State Bar provides that notwithstanding *State Farm*, subparagraph (C)(3) of rule 3-310 is not intended to apply with respect to the relationship between an insurer and a member when, in each matter, the insurer's interest is only as an indemnity provider and not as a direct party to the action.

In its June 2002 submission to the Supreme Court of California, the State Bar stated that the recommended clarifying language offered guidance to lawyers and the courts in applying rule 3-310, in light of the holding in *State Farm*. Specifically, it offered guidance to the State Bar Court in disciplinary matters, the State Bar Office of Enforcement in exercising prosecutorial decisions and civil courts in deciding disqualification motions and malpractice claims. On January 10, 2003, the Supreme

Court issued its order approving the State Bar's proposal. The order included an effective date of March 3, 2003.

The Commission for the Revision of the Rules of Professional Conduct

In addition to the above two rule amendments that were submitted to the Supreme Court, the State Bar's Commission for the Revision of the Rules of Professional Conduct continued its multi-year project to conduct a comprehensive review of the State Bar's ethics rules in light of developments over the past 10 years and current trends nationally. The specific charge of the commission is as follows:

"The Commission is to evaluate the existing California Rules of Professional Conduct in their entirety considering developments in the attorney professional responsibility field since the last comprehensive revision of the rules occurred in 1989 and 1992. In this regard, the commission is to consider, along with judicial and statutory developments, the Final Report and Recommendations of the ABA Ethics 2000 Commission, the American Law Institute's Restatement of the Law Third, The Law Governing Lawyers, as well as other authorities relevant to the development of professional responsibility standards. The Commission is specifically charged to also consider the work that has occurred at the local, state and national level with respect to multidisciplinary practice, multijurisdictional practice, court facilitated propria persona assistance, discrete task representation and other subjects that have a substantial impact upon the development of professional responsibility standards.

The Commission is to develop proposed amendments to the California Rules that:

1. Facilitate compliance with and enforcement of the rules by eliminating ambiguities and uncertainties in the rules;
2. Assure adequate protection to the public in light of developments that have occurred since the rules were last reviewed and amended in 1989 and 1992;
3. Promote confidence in the legal profession and the administration of justice; and
4. Eliminate and avoid unnecessary differences between California and other states, fostering the evolution of a national standard with respect to professional responsibility issues."

In 2002, in addition to its regular meetings, the Commission sought written public comment, participated in a town hall meeting, and conducted a formal public hearing. The Commission solicited input on what topics and rule amendments ought to be

considered. In response to a 90-day public comment period that ended on April 5, 2002, the Commission received thirty-four written comments. Among the comments received were letters from local bar associations, State Bar sections, and specialty bar groups. As a featured segment in the State Bar's 2002 Statewide Annual Ethics Symposium, the Commission participated in a town-hall meeting offering an open forum for the over eighty attendees to discuss the Commission's work. A three-hour formal public hearing was held by the Commission on October 11, 2002 at the State Bar Annual Meeting in Monterey, California. Six speakers filled the allotted time. Other speakers who were not able to make an oral presentation submitted written comments.

The Standing Committee on Professional Responsibility and Conduct

COPRAC's primary activity is to develop the State Bar's advisory ethics opinions. COPRAC also assists the Board of Governors by studying and providing comment on the Rules of Professional Conduct and other laws governing the conduct of attorneys. (See above discussion of proposed amendments to rules 3-310 and 3-600 of the Rules of Professional Conduct.)

COPRAC continues to monitor important state and national studies of professional responsibility, including the ABA's adoption of the ABA Ethics 2000 Commission recommendations to amend the ABA Model Rules of Professional Conduct, and other national and California developments. Among COPRAC's key activities in 2002 were the following: (1) coordination with the State Bar's Alternative Dispute Resolution Committee in preparing comments on California Judicial Council proposals for ethical standards for court-connected mediators and contractual arbitrators; (2) contribution to the work of the Access to Justice Commission through a member liaison assigned to that Commission's Committee on Discreet Task Representation (a.k.a. "unbundling"); (3) written comment and testimony to the ABA Task Force on Corporate Responsibility; and (4) participation in the California Coordinating Committee's analysis of the Security and Exchange Commission's proposed attorney conduct rules pursuant to §307 of the Sarbanes-Oxley Act.

Ethics Opinions

A COPRAC ethics opinion, State Bar Formal Opinion No. 1994-138, was relied upon by the Supreme Court of California in rendering an important decision interpreting rule 2-200 (Financial Arrangements Among Lawyers) of the Rules of Professional Conduct. In *Chambers v. Kay* (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536], a client retained an attorney to handle a litigation matter. The retained counsel brought in a co-counsel to assist on the matter. The co-counsel was to be compensated by receiving a percentage of the contingent fee paid by the client. Neither attorney obtained the client's consent to the fee split arrangement as required by rule 2-200. Upon co-counsel's action alleging breach of agreement for division of attorney fees, the Court held that the fee split arrangement was unenforceable. Significantly, the court cited with approval State Bar

Formal Op. No. 1994-138 in concluding that the scope of rule 2-200 extends beyond referral fees and reaches arrangements in which attorneys divide work.

COPRAC's formal ethics opinions guide members in maintaining their ethical standards. The non-binding opinions are developed in response to questions posed by bar groups or individuals members. In 2002, COPRAC worked on the following opinions:

Opinions Published in 2002

Formal Opinion No. 2002-158

ISSUE: Does the creation of a physically separate "firm" within a public office charged with indigent criminal defense avoid ethical issues arising out of the representation of multiple criminal defendants?

DIGEST: The creation of a physically separate "firm" within a public office charged with indigent criminal defense, so that different "firms" represent different defendants, can avoid conflicts arising from the representation of multiple defendants, but only with adequate safeguards including maintaining the separateness of the two "firms."

Formal Opinion No. 2002-159

ISSUE: Is it ethically permissible for a lawyer to: (1) to tell a potential client of the possibility of financing the legal representation by taking out a mortgage loan on the client's real property and (2) to refer the client to an independent broker who might arrange the financing, where the resulting loan funds are placed in an escrow account which is not controlled by the lawyer and from which the funds are disbursed to the lawyer for fees and costs for work performed on behalf of the client?

DIGEST: A lawyer may refer a potential client to a broker for a real property loan to pay for attorney's fees and costs so long as the lawyer does not provide legal representation or receive compensation with regard to the referral or the resulting loan or escrow transactions, and has no undisclosed business or personal relationship with the broker.

Formal Opinion. No. 2002-160

ISSUES: 1. What ethical constraints govern an attorney whose client has conferred upon her authority to settle, without instituting litigation, claims of the client for specific percentages of the amounts claimed, when the client has disappeared?

2. What ethical constraints govern the attorney's right to collect legal fees from settlement proceeds when communication with the client is not possible?

- DIGEST:
1. An attorney who has not been specifically authorized by a client to settle a claim has no implied or apparent authority to bind a client to any settlement. If the client has authorized the attorney to settle specific claims without instituting litigation, to receive the settlement proceeds, and to take a percentage of the recovery in payment of her fees, the attorney still has an ethical obligation to represent the client competently and to avoid reasonably foreseeable prejudice to the client. Depending on the circumstances, the attorney may have an obligation to make reasonable efforts to locate the client and communicate with the client before proceeding with the settlement. If the settlement offer falls outside the attorney's authorization, the attorney does not have a duty to file an action to avoid the running of the statute of limitations.
 2. If the settlement is permitted by the terms of the client's authorization, if the fee agreement is enforceable, and if the client's authorization to the attorney includes endorsing the client's name on checks paid in settlement of claims, then the proceeds must be placed in the attorney's client trust account and attorney's fees promptly withdrawn from the account.

Opinions Circulated for 90-day Public Comment Period

Proposed Interim Opinion No. 95-0005 (Additional Comment Period deadline: September 9, 2002)

- ISSUE: What are the duties of a lawyer who represents a corporation as its outside counsel, and who also simultaneously represents an officer of that corporation individually, when the lawyer receives information that creates a conflict between the lawyer's duties to the two clients?

- DIGEST: When an outside lawyer represents a corporation and also simultaneously represents a corporate constituent in an unrelated personal matter, information which the lawyer learns from the constituent or as a result of representing the constituent is a client secret of the constituent if the constituent asks the lawyer to keep the information confidential or if the information is embarrassing or detrimental to the constituent. The lawyer may not provide advice to the corporation on a matter which is adverse to the constituent, and substantially related to the lawyer's work for the constituent, without the constituent's consent. Even if the lawyer owes no duty of confidentiality to the constituent, the lawyer owes a duty of undivided loyalty to the constituent while the

constituent is a current client. That duty prevents the lawyer from advising the corporation adversely to the officer, without the officer's consent, while the officer is the lawyer's current client.

If the lawyer's duty of competent representation of the corporation requires the lawyer to provide advice to the corporation adverse to the constituent, then the lawyer must withdraw if providing such advice to the corporation would violate the lawyer's duties to the constituent. The lawyer is not required to withdraw as to any other matter. The lawyer must withdraw in a manner that does not violate her duties to the corporation or to the officer.

Proposed Interim Opinion No. 96-0007 (Commend deadline: June 27, 2002)

ISSUE: What ethical issues are raised when a California attorney publicly advocates civil disobedience, including violations of law, in furtherance of her personally-held political, moral, or religious beliefs, and simultaneously practices law?

DIGEST: While attorneys have rights under the First Amendment to express political, moral, and religious beliefs and to advocate civil disobedience, attorneys must follow their professional responsibility when acting upon their beliefs and when advising clients. At a minimum, attorneys' performance of their professional duties to clients must not be adversely affected by the attorneys' personal beliefs or exercise of First Amendment rights. In selecting areas of legal practice, types of cases and particular clients, attorneys should be cognizant of the possibility that their moral, social, and religious beliefs, and their exercise of their First Amendment rights, could adversely affect the performance of their duties to clients.

Proposed Interim Opinion No. 96-0013 (Comment deadline: June 27, 2002)

ISSUE: Is it possible for an attorney-client relationship to be formed with an attorney who answers specific legal questions, through media available to the public or a segment of the public, when the questions are posed by persons with whom the attorney has not previously established an attorney-client relationship?

DIGEST: Normally, under circumstances when the public or a segment of the public is present, an attorney-client relationship will not be formed when an attorney answers specific legal questions posed by persons with whom the attorney has not previously established an attorney-client relationship. By taking care when answering specific legal questions in such a setting, particularly questions outside the attorney's area of expertise, an attorney can ensure that the persons posing the questions do not have a

reasonable expectation that an attorney-client relationship has been formed or that their communications are confidential.

Proposed Interim Opinion No. 97-0007 (Comment deadline: March 24, 2003)

ISSUE: What are the ethical obligations of an attorney assigned to represent indigent clients who believes that his caseload is too large, and the resources available to him are insufficient, to permit him to represent his clients competently?

DIGEST: Each attorney has a duty to represent the attorney's clients competently. If an attorney is ordered to trial despite his belief that in the circumstances it is impossible to provide competent representation, the attorney nevertheless is required to obey the court's order and defend each client zealously within the bounds of the law. In addition, because the attorney has the same duty of loyalty to each client, the attorney may not sacrifice the defense of any one client in order to focus on the defense of other clients, or in order to protest the level of available resources, even if the attorney believes it is in the best interests of a greater number of other or future clients to do so.

Proposed Interim Opinion No. 96-0012 (Comment deadline: March 24, 2003)

ISSUES: (1) What are the ethical obligations of an insurance defense attorney when the insured requests access to the attorney's file, including communications between the attorney and the insurer to which the insured was not privy?

(2) May the attorney return the original file materials to insured?

DIGEST: (1) Under California law, when an attorney, who is not *Cumis* counsel, is retained by an insurer under a reservation of rights to defend an insured from a third-party claim, the insured and insurer are joint clients of the attorney. Joint clients generally have no expectation of confidentiality between themselves concerning the matter on which they are joint clients. Any communication between the insurer and the retained attorney concerning the defense of insured's claim is a matter of common interest to both insured and insurer. Regardless of whether she was privy to such communications, the insured has a right to them. Consequently, the retained attorney must allow the insured to inspect and copy the file.

(2) Each joint client usually has an equal right to the attorney's original file. The attorney would deny one joint client this equal right by releasing the original file to the other joint client, so the attorney normally may not release the original file to one joint client without the consent of the other

clients. However, the attorney should return on request to each respective client papers and property belonging to that client which the client provided to the attorney during the representation.

Proposed Interim Opinion No. 95-0019 (Comment deadline: March 24, 2003)

ISSUE: Under what circumstances may a communication in a non-office setting by a person seeking legal services or advice from an attorney be entitled to protection as confidential client information when the attorney accepts no engagement, expresses no agreement as to confidentiality, and assumes no responsibility over any matter?

DIGEST: A person's communication made to an attorney in a non-office setting may result in the attorney's obligation to preserve the confidentiality of the communication if (1) an attorney-client relationship is created by the contact or (2) even if no attorney-client relationship is formed, the attorney's words or actions induce in the speaker a reasonable belief that the speaker is consulting the attorney, in confidence, in his professional capacity to retain the attorney or to obtain legal services or advice.

An attorney-client relationship, together with all the attendant duties a lawyer owes a client, including the duty of confidentiality, may be created by contract, either express or implied. In the case of an implied contract, the key inquiry is whether the speaker's belief that such a relationship was formed has been reasonably induced by the representations or conduct of the attorney. Factors to be considered in making a determination that such a relationship was formed include: whether the attorney volunteered his services to the speaker, whether the attorney agreed to investigate a matter and provide legal advice to the speaker about the matter's possible merits; whether the attorney previously represented the speaker; whether the speaker sought legal advice and the attorney provided that advice; and whether the speaker paid fees or other consideration to the attorney.

Even if no attorney-client relationship is created, an attorney is obligated to treat a communication as confidential if the speaker was seeking representation or legal advice and the totality of the circumstances, particularly the representations and conduct of the attorney, reasonably induces in the speaker the belief that the attorney is willing to be consulted by the speaker for the purpose of retaining the attorney or securing legal services or advice in his professional capacity, and the speaker has provided confidential information to the attorney in confidence.

Whether the attorney's representations or conduct evidence a willingness to participate in a consultation is examined from the viewpoint of the reasonable expectations of the speaker. The factual circumstances

relevant to the existence of a consultation include: whether the parties meet by pre-arrangement or by chance; the prior relationship, if any, of the parties; whether the communications between the parties took place in a public or private place; the presence or absence of third parties; the duration of the communication; and, most important, the demeanor of the parties, particularly any conduct of the attorney encouraging or discouraging the communication and conduct of either party suggesting an understanding that the communication is or is not confidential.

The obligation of confidentiality that arises from such a consultation prohibits the attorney from using or disclosing the confidential or secret information imparted, except with the consent of or for the benefit of the speaker. The attorney's obligation of confidentiality may also bar the attorney from accepting or continuing another representation without the speaker's consent. Unless the circumstances support a finding of a mutual willingness to such a consultation, however, no protection attaches to the communication and the attorney may reveal and use the information without restriction.

Ethics Hotline

The State Bar's toll-free statewide confidential service (1-800-2-ETHICS) provides California attorneys with information and research assistance on ethical questions. In 2002, Ethics Hotline staff answered 20,945 calls and distributed 1,025 packets of ethics opinions to interested persons. The advisory ethics opinions sent to interested persons are published by the State Bar and local bar associations. The chart provided below identifies the types of ethical issues most frequently raised by the Ethics Hotline inquirers in the year 2002.

2002 Percentage of Frequently Named Ethics Issues	
Primary Ethics Issues	Percentage
Fees and costs for legal services	20.3%
Conflicts of interest	16.6%
Misconduct/Moral Turpitude/Trial Conduct	12.6%
Attorney advertising and solicitation	8.3%
Communications with clients, adverse party and others	7.6%
Unauthorized practice of law	6.7%
Withdrawal from Employment/Termination	6.7%
Client Confidential Information	6.7%

Clients files	6.4%
Other	3.0%

Publications

California Compendium on Professional Responsibility (Compendium). The State Bar publishes the Compendium, a compilation of local, state and national ethics information. It is updated annually. In 2002, 646 Compendiums updates and new subscriptions were sold.

California Rules of Professional Conduct and State Bar Act (Publication 250). Publication 250 is a convenient resource book which includes: The California Rules of Professional Conduct (past and present); the State Bar Act; California Rules of Court related to the State Bar and members of the State Bar; various statutes relating to discipline and attorneys and the duties of members of the State Bar; the Minimum Continuing Legal Education Rules and Regulations; and the Rules and Regulations Pertaining to Lawyer Referral Services (Including Minimum Standards for a Lawyer Referral Service in California). This publication is updated annually and is also available on the State Bar website. In 2002, approximately 3,500 copies of Publication 250 were sold.

Handbook on Client Trust Accounting for California Attorneys ("Handbook"). The Handbook is a practical guide created to assist attorneys in complying with the record - keeping standards for client trust accounts which went into effect on January 1, 1993. The Handbook includes a copy of the standards and statutes relating to an attorney's trust accounting requirements; a step-by-step description of how to maintain a client trust account; and sample forms.

In 2002, approximately 257 copies of the handbook were sold.

Ethics School Program Videotape. This video program was produced in 1994 and was designed to offer the highlights of the State Bar's Ethics School Program touching on the following four topics: formation of the attorney/client relationship; withdrawal from employment; client trust accounting; and reportable actions. The program is approved for one hour of MCLE credit in legal ethics.

Lawyer Personal Assistance Program. In 2002, the services offered by the Lawyer Personal Assistance Program, including, providing members with education, confidential counseling and referrals about chemical dependency and emotional distress, were substantially transferred to the new legislatively mandated Lawyers Assistance Program, now covered in this report under the heading "Lawyer Assistance Program" on 43.

Special Projects

Annual Statewide Ethics Symposium

On June 29, 2002, COPRAC held a Statewide Ethics Symposium at The Practising Law Institute in San Francisco. The event brought together experts from all aspects of the professional responsibility field including: ethics professors, judges, ethics consultants, State Bar staff, local ethics committee leaders, expert witnesses, and representatives of the defense bar. The symposium's scheduled topics, which were presented by a diverse group of expert panelists, featured: "Unbundling Legal Services—The Ethical Implications of Limiting the Scope of Representation on the Access to Justice and The Apportionment of Legal Fees"; "Criminal Law Practice Breakout—*People v. Dang* & The Ethical Implications of Lawyers Testifying Against Their Criminal Defendant Clients: Do California Lawyers Have Tarasoff Duties?"; "Civil Practice Breakout—Lawyers on the Move"; "Status Report of the Commission for the Revision of the California Rules of Professional Conduct"; and "Open Forum 'Town Hall' Meeting: Commission for the Revision of the Rules of Professional Conduct". Each of the panels included interactive sessions providing a unique opportunity for high level discussion with the dialogue ranging from humorous to heated. In addition to the panels, Associate Justice Carlos Moreno, Supreme Court of California, provided a keynote address.

Annual Meeting Programs

In October 2002, the Office of Professional Competence offered nine ethics and/or competence related educational programs at the State Bar's Annual Meeting in Monterey. The topics covered were: Recent Significant Developments Affecting the Law of Lawyers; Methods for Identifying and Avoiding Conflicts; The Practical Ethics of Attorney's Fees; Ethics in Using Technology in the Law Office; Chemical Dependency and Emotional Distress (four programs); Tension Between the Ethical Lawyer and Winning at All Cost; and The Bard and the Bench (two-part program co-sponsored with the American Inns of Court).

Local and Specialty Bar Association Outreach Programs

In cooperation with local and specialty bar associations, staff conducted outreach ethics programs throughout the year 2002 at various locations. Program topics ranged from conflicts of interest to recent developments in ethics, and were selected by working closely with local bar leaders familiar with the kinds of issues relevant for the particular legal community. The groups who received presentations included: the Solano County Bar Association, the Contra Costa County Bar Association, the Tulare County Bar Association, the American Immigration Lawyers Association, and the State Bar Intellectual Property Institute.

Competence Resources on the State Bar Website

In 2002, much work was accomplished in the posting of ethics and competence related resources on the Bar's website. The following resources are now available online: 1) posting of the State Bar's memoranda submitted to the Supreme Court of California requesting approval of proposed amended rules 3-310 and 3-600 of the Rules of Professional Conduct; 2) new direct link from the homepage to a pdf version of the current California Rules of Professional Conduct; 3) posting of year 2002 updates to the California Rules of Professional Conduct and The State Bar Act and other provisions governing the duties of attorneys; 4) posting of COPRAC draft opinions and rule amendments circulating for public comment; 5) posting of the subject matter index to the California Compendium on Professional Responsibility under the Ethics Information area (this version may be regarded as a trial version, as staff is considering various alternatives for optimizing the index as a web-based research tool; and 6) addition of new web page posting the agendas and action summaries for the State Bar of California Commission for the Revision of the Rules of Professional Conduct.

LAWYER ASSISTANCE PROGRAM

In one year the State Bar has taken its new Lawyer Assistance Program from a legislative concept to a successful operational entity. The State Bar's disciplinary process has, for the time being, been relieved of some of the burden and expense of adjudicating complaints against many participants, and the clients of those participants now enjoy the protection of close supervision of their attorneys if they continue to practice.

Trubled lawyers have come to the Lawyer Assistance Program by all the paths the Legislature foresaw: by referral from the Bar's system of discipline, voluntarily at the early signs of complaint and investigation, or just by personal choice. They are carefully evaluated for 90 days but their participation in the Program begins at once, with crisis intervention, treatment referrals, group and peer support, and professional counseling if required.

The Program's Oversight Committee is composed of medical, psychiatric and substance abuse specialists, lawyers with extensive experience in recovery, and institutionally experienced public members. All the members are appointed by the President *pro tem* of the Senate, the Speaker of the Assembly, the Governor, or the Board of Governors of the State Bar.

There is no shortage of lawyers seeking help. Lawyers sought it out even before the Program's doors were opened and they have been coming in increasing numbers since. As in every other program of its kind not all the participants are successful, although the Program's experience so far suggests a very high record of accomplishment. The requirements for completion are strict, and require far more sobriety and stability than one year can measure. Every indication, however, is that the Program will fully serve the purposes the Legislature intended: protecting the public while helping rescue as many lawyers as it can from the grip of the chronic, progressive and potentially fatal diseases afflicting them.

To this end the Program has put every necessary element of its operation in place. It has published, and the Board of Governors has approved, rules and criteria that govern admission, participation, completion and withdrawal from the Program. It has organized evaluation committees statewide, and has established local professionally facilitated peer group meetings that its participants attend. It reaches out through a wide variety of media to the profession, the judiciary, and the general public.

Although independent of the Bar's disciplinary system, the LAP closely coordinates its procedures with the Office of the Chief Trial Counsel and the State Bar Court so that early intervention and rehabilitation can take the place of discipline wherever appropriate. And it widely promulgates advice and materials to help educate troubled lawyers even before they come in contact with any formal procedure.

By year end, 157 attorneys had become participants in the LAP. Fifty-eight were referred by the Office of Chief Trial Counsel or the State Bar Court. Another 58, aware that investigations were pending, referred themselves. Forty-one referred themselves without any charges or investigations pending. Fifty-nine participants were admitted for problems of substance abuse only, 54 were admitted for problems of mental health only, and 44 were admitted with dual diagnoses, problems relating to both substance abuse and mental health.

After only one year much remains to be done, but the Lawyer Assistance program has achieved widespread notice and success in its first twelve months and shows every sign of achieving even more in future years.

OFFICE OF CERTIFICATION

The Office of Certification develops standards for certification and oversight of non-disciplinary regulatory programs relating to the practice of law, and administers such programs. The Office administers 11 certification programs as follows:

**1) Foreign Legal Consultants (“FLC”)
(California Rules of Court, rule 988; State Bar Rules & Regulations)**

Attorneys licensed to practice in foreign jurisdictions who wish to practice the law of that jurisdiction in California must meet certification requirements administered by the Bar. These include a required number of years of practice and security for claims for malpractice and dishonest conduct. There are currently 31 certified foreign legal consultants, (an increase of 11 from the previous year.)

**2) Law Corporation
(Business and Professions Code, section 6160 et. seq.)
(State Bar Rules & Regulations)**

Attorneys who wish to practice law as a professional law corporation must be registered with the Bar. Registration requirements include showing corporate structure, security for claims and having an approved name. The law corporations renew annually. At the end of 2002, there were 6,260 registered law corporations (an increase of 175 from the previous year).

**3) Limited Liability Partnerships (“LLP’s”)
(State Bar Rules & Regulations)**

Attorneys who wish to practice law as a limited liability partnership must register with the Bar. Among other things, they must show their partnership structure, security for claims and have an approved name. The LLP’s renew annually. At the end of 2002, there were 1,839 LLP’s (an increase of 129 from the previous year).

**4) Lawyer Referral Services (“LRS”)
(Business & Professions Code, section 6155; State Bar Rules & Regulations)**

Entities that operate for the direct or indirect purpose of referring potential clients to attorneys in California must be certified by the State Bar. These may be non-profit or for-profit entities. Currently, there are 62 certified lawyer referral services (an increase of 2 from the previous year.)

**5) Legal Specialization
(California Rules of Court, rule 983.5; State Bar Rules & Regulations)**

Attorneys may be certified to specialize in the following areas of law: appellate; criminal; estate planning, trust and probate; family; immigration and nationality; personal and small business bankruptcy law; taxation; and worker's compensation. An attorney must pass a written examination, possess special education and experience and undergo reviews made by their peers and judges in order to be a certified specialist. Certified specialists must recertify every five years. Currently, there are 3,805 certified legal specialists (an increase of 104 from the previous year). In addition, the State Bar accredits entities who certify attorneys in the following areas: civil trial advocacy; criminal trial advocacy; family law trial advocacy; creditors rights; consumer and business bankruptcy; elder law; accounting; and legal and medical malpractice. Currently, there are four accredited certifiers.

**6) Practical Training of Law Students ("PTLS")
(California Rules of Court, rule 983.2; State Bar Rules & Regulations)**

Law students who meet certain requirements may provide legal services under the supervision of an attorney. In 2002, the office processed approximately 1,223 PTLS certification applications (an increase of 123 from the previous year.)

**7) Pro Hac Vice ("PHV")
(California Rules of Court, rule 983)**

Non-California licensed attorneys who intend to appear in California courts on particular cases must file a copy of their application with the State Bar. The State Bar maintains statewide records of those applications. In 2002, approximately 2,431 pro hac vice applications were filed with the State Bar (an increase of 181 from the previous year.)

**8) Out of State Attorney Arbitration Counsel ("OSAAC")
(California Rules of Court, rule 983.4; State Bar Rules & Regulations)**

Non-California licensed attorneys who intend to seek permission to represent a party in an arbitration proceeding in California must serve a certificate on the State Bar. In 2002, approximately 273 such records were filed with the State Bar (an increase of 64 from the previous year.)

**9) Special Masters
(State Bar Rules & Regulations; California Penal Code Section 1524)**

Attorneys who wish to serve as a special master appointed by the courts of record to search attorneys, physicians and clergy offices must apply with the State Bar. The list of attorneys who qualify for special master appointment is maintained by the State Bar. There are currently 375 qualified special masters.

10) Minimum Continuing Legal Education ("MCLE")

(Business & Professions Code, section 6070; California Rules of Court, rule 958; State Bar Rules & Regulations)

All active members of the State Bar, unless exempt, must meet minimum continuing education requirements every three years. During 2002, the State Bar sent MCLE compliance cards to approximately 41,000 of its Group 2 members (last names H-M). During 2002, the State Bar suspended 799 Group 3(last names N-Z) members for non-compliance. During 2002, the State Bar received 1,866 applications for provider and activity approval and renewed 404 providers. At the end 2002, there were approximately 1,178 approved providers. In addition, during 2002, the State Bar received 321 member credit requests.

**11) Military Counsel
(California Rules of Court, rule 983.1)**

Non-California attorneys who serve as judge advocates must file an application with the State Bar seeking permission to represent a person in the military service in a California court. In 2002, our office received no such requests.

EDUCATION

The State Bar's numerous educational activities are scattered throughout a number of offices. Since the advent of continuing legal education requirements, the Bar has become one of the biggest MCLE providers in the state, offering hundreds of classes, seminars and workshops to attorneys annually to help them meet those requirements.

Section Education and Meeting Services

The Bar's 16 sections, each, dealing with a specific area of law, have a membership of 58,921. Although originally established as a way of expanding professional contacts and increasing expertise, the sections have evolved into education entities.

Each section produces a quarterly newsletter, which keeps section members up to date on timely developments in the field and advertises upcoming MCLE programs and other activities sponsored by the section. The newsletters frequently include lengthy articles on issues of importance to practitioners in the field.

In 2002, the sections produced 450 education seminars and programs. The vast majority of programs were individually sponsored section events and the remainder programs were offered at one Section Education Institute in the Winter and at the Annual Meeting in October.

Ten sections - Antitrust, Business, Environmental, Estate Planning, Labor, Litigation, Intellectual Property, International, Real Property, Taxation - held annual weekend programs offering education credit.

In addition, the Office of Section Education and Meeting Services acts as a central registry for all State Bar-sponsored continuing legal education programs, including those offered by the sections. In total, the office handled 532 MCLE programs in 2002.

GENERAL FUND AND MEMBERSHIP FEES

In 2002, the annual membership fee for active members was \$390. Members who declared that their annual income from the practice of law was less than \$40,000 were eligible for a waiver of 25 percent of the annual membership fee and if their annual income from the practice of law was less than \$25,000 they were eligible for a waiver of 50 percent of the fee.

Most of the annual membership fee supports the State Bar's General Fund. A portion of the annual membership fee is assessed for the Client Security Fund (\$35) and for the Building Fund (\$10). The annual membership fee does not support the program for admission to membership in the State Bar, which is a self supported program. Voluntary programs are not supported by the annual membership fee, they are supported by voluntary contributions. The State Bar's General Fund provides resources to operate programs which serve both the public and the Bar's active and inactive members. These programs include the attorney disciplinary system, administration of justice, governance, administration of the profession, program development, and communications. The charts below show the allocations of membership fees to the general and administrative costs of mandatory programs supported by the fees.

GENERAL FUND 2002 Actual Expenditures (Dollars in Thousands)		
Program	Amount	Percentage
Discipline	\$28,266	82.44%
Administration of Justice	432	1.26%
Governance	2,132	6.22%
Administration of the Profession	404	1.18%
Program Development	925	2.70%
Communications & CBJ	2,128	6.20%
TOTAL GENERAL FUND-PROGRAM EXPENSES	\$34,287	100%

DISCIPLINE 2002 Actual Expenditures (Dollars in Thousands)		
Sub-Program	Amount	Percentage
Office of Chief Trial Counsel	\$21,262	75.23%
State Bar Court	5,018	17.75%
Fee Arbitration Program	436	1.54%
Professional Competence	1,549	5.48%
TOTAL DISCIPLINE-SUB PROGRAM	\$28,265	100.00%

LEGISLATIVE DEVELOPMENTS

AB 1703 (2001-2002) – Chapter 137, Statutes of 2002 (2002-07-11).

This act amends section 6072 of the Business and Professions Code.

Existing law provides that, commencing January 1, 2003, the contracting law firm of a contract with the state, for legal services exceeding \$50,000.00, to certify that it agrees to make a good faith attempt to provide a minimum number of hours of pro bono legal services each year of the contract.

AB 1703 defines “10% of the contract” to mean the number of hours equal to 10% on the contract amount divided by the average billing rate of the firm.

SB 1459 (2001-2002) – Chapter 394, statutes of 2002 (2002-09-06).

This act amends section 6126 of the Business and Professions Code.

Existing law provides that a person who practices law or holds himself or herself out as practicing or entitled to practice law is guilty of a misdemeanor if he or she is not an active member of the State Bar.

This bill would exempt from this provision a person who was authorized, pursuant to statute or court rule, to practice law in the state at the time he or she performed the act.

SB 1897 (2001-2002) – Chapter 415, Statutes of 2002 (2002-09-06)

This act amends sections 6021, 6065, 6031.5, 6016, 6019, 6145, 6079.5 and 6032 of the Business and Professions Code.

The State Bar Act provides for licensing of attorneys by the State Bar of California, sets forth the disciplinary authority of the Board of Governors of the State Bar, and provides for a State Bar Court to hear and decide disciplinary proceedings.

This bill would instead refer to the Regulation, Admission and Discipline Oversight Committee or its successor committee on attorney discipline.

AB 1938 (2001-2002) – Chapter 1118, Statutes of 2002 (2002-09-30).

This act amends section 391.7 of the Code of Civil Procedure.

Existing law authorizes a defendant in any litigation pending in any court of this state, at any time until final judgment is entered, to move for a court order requiring the plaintiff to furnish security as a vexatious litigant, as defined.

This bill would specifically extend these provisions to any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.

AB 2055 (2001-2002) – Chapter 1059, Statutes of 2002 (2002-09-29).

This act amends section 2018 of the Code of Civil Procedure and sections 803 and 1524 of the Penal Code.

Under existing law, an attorney's work product, material prepared by or for a lawyer for planned or pending litigation, is generally exempt from discovery or compelled disclosure unless a court finds prejudice to a party seeking discovery or injustice.

This bill would eliminate the protection of the work product in existing law when a lawyer is suspected of knowingly participating in a crime or fraud in any official investigation or proceeding or action brought by a public prosecutor in the name of the People of the State of California, if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or fraud.

SB 1707 (2001-2002) – Chapter 176, Statutes of 2002 (2002-07-12).

This act amends section 1281.85 of the Code of Civil Procedure.

Existing law, beginning July 1, 2002, requires a person serving as a neutral arbitrator pursuant to an arbitration agreement to comply with the ethics standards for arbitrators adopted by the Judicial Council.

This bill would specify that these provisions do not apply to an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

SB 2009 (2001-2002) – Chapter 491, Statutes of 2002 (2002-09-12).

This act amends section 128.7 of the Code of Civil Procedure.

Existing law requires, until January 1, 2003, that all pleadings filed with a court be signed, except as specified, and that the filing of any paper with a court certifies specified conditions have been met.

This bill would shorten from 30 days to 21 days the period during which the challenged paper may be withdrawn or appropriately corrected, and extend the January 1, 2003, termination date of these provisions to January 1, 2006.

AB 1962 (2001-2002) - Chapter 945, Statutes of 2002 (2002-09-27).

This act amends section 250 of Evidence Code and 6252 of Government Code.

Existing law relating to evidence in court actions and specified administrative proceedings defines evidence as including a writing, which is defined as handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, pictures, sounds, or symbols, or combinations thereof.

This bill would expand the Public Records Act to include the above definition of what constitutes a writing, regardless of the manner in which the record has been stored.

SB 2061 (2001-2002) - Chapter 72, Statutes of 2002 (2002-06-21).

This act amends sections 912, 917, and 952 of the Evidence Code.

Existing law specifies that the right of a person to claim an evidentiary privilege is waived if the holder of the privilege discloses a significant part of the privileged communication or has consented to that disclosure, as specified.

This bill would add domestic violence victim-counselor privilege to the list of evidentiary privileges to which this provision applies.

Existing law provides that a communication between a client and his or her lawyer is not deemed lacking in confidentiality solely because the communication is transmitted by facsimile, cellular, telephone, or other electronic means between the client and his or her lawyer.

This bill would delete that provision and add a provision specifying that a communication between persons in a privileged relationship does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.

GLOSSARY

Admonition

A written non-disciplinary reprimand issued by the Office of the Chief Trial Counsel or the State Bar Court pursuant to Rule 264, Rules of Procedure of the State Bar of California.

Agreement in Lieu of Discipline

An agreement between the member and the Office of the Chief Trial Counsel in lieu of disciplinary prosecution, pursuant to Business and Professionals Code sections 6068(l) and 6092.5(i).

Backlogged complaints

Complaints that have been pending in investigation longer than six full months from the date of receipt (12 months for complex cases) without dismissal, admonition of the member involved or the forward of a completed investigation for prosecution.

Client Trust Accounting School

A four-hour program designed to provide practical information to attorneys on the proper maintenance and handling of client trust accounts.

Complaint

A communication which is found to warrant an investigation of alleged misconduct of a member which, if the allegations are proven, may result in discipline of the member.

Complaint - held

A complaint for which a status of the case has been completed, reviewed and approved and which is being held pending receipt of remaining Statements of the Case [see below] on the same member.

Complaint - in abeyance

A complaint temporarily not being worked on for a specific reason, such as pending acceptance of an attorney's resignation by the Supreme Court.

Complaint - open

A complaint being worked on.

Conviction referral

A formal disciplinary proceeding following an attorney's criminal conviction commenced by a referral order from the State Bar Court Review Department directing the Hearing Department to hold a hearing, file a decision and recommend the discipline to be imposed, if any, or take other action on the issue or issues stated in the order.

Disbarment

A disciplinary action that prohibits an attorney from practicing law in the state. The attorney's name is stricken from the Roll of California Attorneys.

Dismissal

A proceeding closed by the Office of the Chief Trial Counsel or the State Bar Court for a specific reason, such as no merit or insufficient evidence.

Ethics School

An eight-hour program that focuses upon general principles of professional responsibility and law practice management and is designed to educate attorneys in methods they can utilize to avoid complaints being made to the State Bar.

Finality Rules

California Supreme Court Rules that empower the State Bar Court to handle a number of matters - including placing convicted attorneys on interim suspension in appropriate instances - that formerly were Supreme Court responsibilities. The Rules also provide that, when a member does not request Supreme Court review after pursuing a State Bar Court appeal, the State Bar Court's recommendations are adopted by the Supreme Court as its final order unless the high court decides on its own to review the case.

Inquiry

A communication concerning the conduct of a member of the State Bar received by the Office of the Chief Trial Counsel which is designated for evaluation to determine if any action is warranted by the State Bar.

Involuntary Inactive Enrollment

The transfer of an attorney to inactive status (1) after the attorney is judged to present a substantial threat of harm to clients or the public, or (2) after the attorney is judged to be unable to practice without danger to clients or the public because of a disability, or (3) for other reasons allowed by state law. An attorney on inactive status cannot practice law.

Notice of Disciplinary Charges

A document filed in State Bar Court containing formal charges against a member.

Private Reproval

A censure or reprimand issued by the Supreme Court or the State Bar Court which is not a matter of public record unless imposed after the initiation of formal disciplinary proceedings. The reproval may be imposed with duties or conditions.

Pro tempore hearing judges

A panel of specially trained lawyers or retired judges who serve as judges of the State Bar Court Hearing Department on a temporary, as-needed basis.

Probation

A status whereby an attorney retains the legal ability to practice law subject to terms, conditions and duties for a specified period of time.

Public Reproval

A censure or reprimand issued by the Supreme Court or the State Bar Court which is a matter of public record. The reproval may be imposed with duties or conditions.

Reinstatement

Readmission by the Supreme Court to the practice of law and to membership in the State Bar of a former member who resigned or was disbarred. The former member must demonstrate rehabilitation and present moral qualifications as well as ability and learning in the law.

Request for Further Proceedings

A request from a complaining witness after being advised that the complaint has been dismissed or the member has been admonished.

Resignation Tendered with Charges Pending

A written relinquishment of the right to practice law and resignation as a member of the State Bar by a member against whom disciplinary charges are pending. Supreme Court acceptance of a resignation is required to make it effective, but as soon as a member submits a resignation in proper form, the member is transferred to inactive status and cannot practice law.

Resource Letter

A Resource Letter may be issued where there is a probable violation or a potential for a future violation of the Rules of Professional Conduct and/or the State Bar Act which is minimal in nature and would not lead to discipline of the member. The member is referred to various resources which may assist the member in avoiding future problems and/or the filing of complaints against him or her in the future.

Statement of the Case

An investigator's written report of information and evidence submitted to an Office of the Chief Trial Counsel attorney for further action.

Stipulation

An agreement between the member and the Office of the Chief Trial Counsel regarding a statement of facts, conclusions and/or disposition filed by the Office of the Chief Trial Counsel in the State Bar Court.

Suspension

A disciplinary action that prohibits an attorney from practicing law or from holding himself or herself out as a lawyer for a period of time set by the California Supreme Court.

Termination

A proceeding closed due to an external cause, such as death of the member, disbarment in a separate matter or resignation with charges pending.

Warning Letter

A Warning Letter may be issued when there is a probable violation of the State Bar Act or the Rules of Professional Conduct which is minimal in nature, does not involve significant harm to the client or the public and does not involve the misappropriation of client funds.